4404. Adulteration of oats. U. S. v. Certain Carloads of Oats. Tried to the court and jury (as to 28 carloads of the product). Verdict for the Government. Consent decrees of condemnation and forfeiture as to the remaining carloads of oats. Product ordered released on bond. (F. & D. No. 6211. I. S. Nos. 9-k, 10-k, 21-k, 23-k, 26-k, 27-k, 28-k, 29-k, 30-k, 470-k, 473-k, 474-k, 475-k, 476-k, 477-k, 478-k, 479-k, 480-k, 482-k, 483-k, 485-k, 487-k, 488-k, 489-k, 571-k, 572-k, 573-k, 574-k, 575-k, 577-k, 579-k, 580-k, 582-k, 583-k, 585-k, 587-k, 589-k, 591-k, 592-k, 593-k, 594-k, 595-k, 596-k, 597-k, 598-k, 599-k, 600-k, 1157-k, 1158-k, 1159-k, 1160-k, 1161-k, 1162-k, 1163-k, 1164-k, 1165-k, 1166-k, 1174-k, 1175-k, 1176-k, 1177-k, 1178-k, 1179-k, 2934-k, 3001-k, 3004-k, 11138-k, 11446-k, 11447-k, 11627-k, 11628-k, 11633-k, 11634-k, 11635-k. S. No. E-194.)

On January 15, 20, and 21, 1915, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district 74 separate libels for the seizure and condemnation of as many carloads of oats, remaining unsold and unloaded from the cars at Baltimore, Md., alleging that the product had been shipped and transported from the States of Illinois and Wisconsin, respectively, into the State of Maryland, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in each of the libels because the product contained a large percentage of foreign matter, to wit, a mixture of barley and screenings, which had been mixed with and substituted for oats.

On February 19, 1915, the claims and answers of the Norris Grain Co., Gill & Fisher, John T. Fahey & Co., and the Louis Muller Co., all of Baltimore, Md., with respect to 28 carloads of the product, were filed, and on March 26, 1915, the proceeding came on for a hearing before the court and a jury. After the submission of evidence and argument by counsel the court directed the jury to return their verdict without leaving the box, which was done, and said verdict was in favor of the libelant. On said date the formal decree of condemnation and forfeiture was entered, and it was ordered by the court that the 28 carloads of oats should be delivered to the respective consignees and claimants thereof, to wit: Gill & Fisher, John T. Fahey & Co., the Norris Grain Co., and the Louis Muller Co., upon payment of all the costs of the proceeding and the execution of a bond in an amount equal to at least $1,200 for each car released, in conformity with section 10 of the act.

On February 5, 6, and 17, 1915, John T. Fahey et al.; Blanchard Randall, George S. Jackson, Eugene Blackford, and Joseph G. Reynolds, a copartnership trading as Gill & Fisher, Baltimore, Md.; Hammond Snyder & Co., incorporated, of Baltimore, Md.; and Clark Fagg and A. K. Taylor, a copartnership trading as Fagg & Taylor, Milwaukee, Wis., claimants, having filed their claims and answers praying for the release of the product contained in the remaining cars, judgments of condemnation and forfeiture as to these cars, about 46 in number, were entered, and it was ordered by the court that the product should be released to said claimants upon the payment of the costs of the proceedings and the execution of bond in the several cases in an amount aggregating $58,200, in conformity with section 10 of the act.

In certain of the cases the question of the taxation of costs having arisen, there was filed on February 20, 1915, upon the subject of costs, the following opinion by the court (Rose, *J.*):

In this case identical libels were filed each against a separate carload of oats in cases Nos. 186, 204, 211, 231, 232, 239, 240, and 241. After the filing of the libels and the seizure of the goods in question thereunder and the marshal's return thereto, the same claimants intervened and asked and obtained an order of consolidation of the cases, and thereupon filed an answer consenting to condemnation. An order was thereupon passed directing the destruction of the oats seized unless the claimants by day fixed therein paid the costs of the proceedings

and gave the bond required by the proviso of section 10 of the Food and Drugs Act that the merchandise should not be sold in violation of law. Claimants have given the bond, and the question now arises as to the taxation of costs.

The point in controversy is as to what docket fee should be taxed, nominally for the district attorney, actually for the United States, under section 824 of the Revised Statutes.

In case 186, a judgment having been rendered without a jury, a fee of $10 should be taxed. While the practice by the statute is assimilated to that of admiralty, the case is doubtless a case at law. The only difficult question is as to what docket fee should be charged in the seven other cases which have been consolidated with 186. I think the practice which has heretofore prevailed for many years in this court in similar matters is reasonable. Those cases should be treated as cases at law which have been discontinued and for which the docket fee to be taxed is $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*